IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

NOTICE NO. 1400 OF 2005
IN
DELHI SUIT NO. 1729 OF 1994

Mr. Ripan Wadhwa
AND
M/s. Aztec Laboratories Pvt. Ltd.
..Plaintiffs.

Versus.

M/s. Sun Pharmaceutical
Industries Ltd. ..Defendants.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 21st June, 2006.

P.C.

1. This notice is under Order XXI Rule 37 of the Civil Proceodure Code.

2. The decree is passed on 19th February, 1996 in the above suit and the present application is for detention of the concerned officers of the defendants who are in default. When this Notice was placed before me, an affidavit has been filed by Senior Manager - Legal of the defendant in which at paragraph nos. 7 and 19 the following statements are made:

> "I say that the AZTEC as such was the name of its cardiology division and the defendant has never used it

as their trading style and has never appeared on any of its products being sold in the market. The AZTEC division of the defendant was involved in research in cardiology and in the creation of cardiovascular specially drugs with the backing of SPARC (Sun Pharma Advanced Research Centre). That as such AZTEC has never been used bythe defendant on anyof its products and it has never marketed anyof its products under the name AZTEC. In any case upon coming to know of the ex parte decree passed bythe Hon'ble High Court at Delhi, the defendant has stopped using the said name AZTEC."

"I say that the exparte decree passed by the Hon'ble Delhi High Court on 19th February, 1996, has no mention of trade mark AZTOR and is restricted only to the use of trade mark as AZTEC. I say that the defendant company is selling product under the name as AZTOR and

AZTEC and AZTOR being both different, the plaintiffs cannot rope in the trade mark AZTOR of the defendant in the present execution. I say that AZTEC and AZTOR are poles apart, AZTOR is phonetically, visually and structurally dissimilar and different to AZTEC. In any case there is no specific prayer in the Execution Petition, regarding the trade mark of the AZTOR of the defendant.

3] In the light of the statements on affidavit which has been filed in the Court on 24th April, 2006 and when sufficient time was available for the decree holder to take appropriate steps, in my view, it is not necessary to pursue the show cause notice any further and it is accordingly discharged.

4. This order is passed inspite of my prima facie view that Order XXI Rule 37 (1) of the Code of Civil Procedure would not be attracted; considering the nature of decree, that is passed. In this case, it is a decree not for payment of money, but permanent injunction which is being executed and enforced.

5. No order as to costs.

(S.C.DHARMADHIKARI,J)